

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**BIOGEN INTERNATIONAL GMBH  
and BIOGEN MA INC.,**

**Plaintiffs,**

**v.**

**MYLAN PHARMACEUTICALS INC.,**

**Defendant.**

**Civil Action No. 1:17-cv-116-IMK**

**PLAINTIFFS’ RESPONSE TO DEFENDANT’S NOTICE OF SUPPLEMENTAL  
AUTHORITY**

On October 28, 2019, Mylan filed a Notice of Supplemental Authority, ECF No. 292, in this Court arguing that the non-binding Memorandum Order issued in the District of Delaware case *Baxalta Inc. v. Bayer Healthcare LLC*, No. 17-cv-1316-RGA-SRF (D. Del.), ECF No. 292-1, “informs the issues raised in Mylan’s objections.” ECF No. 292 at 1. Biogen files this Response to counter Mylan’s argument and explain that the *Baxalta* Order should have no impact on this Court’s determination because it is not applicable to the facts or issues in Mylan’s *Objection to the Order Denying Defendant’s Motion for Relief from Stipulated Protective Order as to Certain Documents*. ECF No. 280.

First, the alleged supplemental authority is inapposite because the *Baxalta* Magistrate found the “plaintiffs have satisfied their burden of showing good cause” to modify the protective order. ECF No. 292 at 2. Here, Magistrate Judge Mazzone found the opposite, holding Mylan failed to meet its burden of proving that the documents should be de-designated because the documents, even with Mylan’s proposed redactions, contained Confidential and Highly Confidential information as defined by the Stipulated Protective Order. *Order Denying*

*Defendant's Motion [243] for Relief from Stipulated Protective Order as to Certain Documents*, ECF No. 277 at 7-9.

Second, *Baxalta* is inapplicable because the *Baxalta* plaintiffs did not request that the court de-designate documents. Instead, the plaintiffs requested a modification of the protective order to produce a specific document that was “highly relevant” to the IPR. ECF No. 292 at 2. Unlike *Baxalta*, Mylan requests that this Court de-designate documents and allow Mylan to publicly disclose these documents under the current Stipulated Protective Order (“SPO”). *Baxalta* does not address de-designation or Mylan’s argument that the Magistrate Judge clearly erred in his factual analysis of the challenged documents, finding that these documents were properly designated. ECF No. 280 at 6-10. Because the non-binding *Baxalta* Order presents an entirely different set of facts and issues to those in Mylan’s Objection, this Court should give no weight to *Baxalta* and uphold the Magistrate Judge’s Order finding that the challenged documents are properly designated under the SPO.

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 4, 2019, I caused a true and correct copy of the foregoing PLAINTIFFS' RESPONSE TO DEFENDANT'S NOTICE OF SUPPLEMENTAL AUTHORITY to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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